

**City of Manchester, New Hampshire**  
**Proposed Articles of Agreement**  
**For the Towing of Motor Vehicles**

This agreement made the 14<sup>th</sup> of December 2004 by and between the City of Manchester, a body corporate and politic by and through its Police Department with an address of 351 Chestnut Street, Manchester New Hampshire hereinafter referred to "City" and ----- hereinafter referred to as the "Contractor".

**Article 1-Purpose of the Agreement**

The purpose of this agreement is to enter into a two (2) year non-exclusive agreement with a term commencing on December 14, 2004 and ending on December 14, 2006 for the towing of vehicles, at the request of the City. The City shall be the sole determinant in the award of the contract to the Contractors that meet all the minimum evaluation criteria. The City estimates 4000 tows per year. The Volunteer Independent Contractors shall maintain itemized records of all tows and storage fees charged under this contract. Members of the Manchester Police Department Traffic Division may inspect those records at any time. All administrative fees (five dollars per vehicle, see the section Snow Emergency for those specific fees) due to the City under this contract shall be rendered within 20 calendar days of the date of billing by the City. Failure of the contractor to pay the administrative fees by the 20<sup>th</sup> calendar day will result in the immediate suspension of the contractor from this agreement. Once payment is made, contract performance may be resumed. A second failure to pay will result in the termination of the contract. Services are to be provided on a twenty four (24) hour basis 365 days a year.

**Article 2- Scope of Services**

- A). The contractor shall supply all labor, materials and equipment to remove any motor vehicle, so ordered towed, from the City streets to a storage place. The contractor shall have a place of business within the City of Manchester. The City shall also be provided with the names and address of all sons or entities that have ownership or equity interest in the Contractor. The City at its sole discretion may waive this requirement.

The place of business for the towing service shall include a posted enclosed impound area within the City. Such impound area must be completely enclosed by such a design that a person would reasonably believe that entering into the enclosed area would constitute trespassing. Such lots shall have the capacity for 20 vehicles. The lot shall be posted in accordance with NH RSA 635:4 and signage consistent with RSA 635:4.

- B). All services are to be performed in a safe manner and shall conform to Federal State and Local laws.
- C). The agreement may be terminated at any time, if in the sole opinion of the City, the Contractor has failed to fulfill its responsibilities as expressed in this agreement.

Failure to fulfill responsibilities includes, but is not limited to the following:

- 1). Refusal of the contractor to accept a tow assignment. A Contractor shall not pass on a request for a tow. More than 3 passes in a sixty (60) day period may result in the Contractor being suspended or terminated from this agreement.
  - 2). Failure to appear at the location of a tow within 20 minutes between the hours of 9:00 AM to 5:00 PM (business hours) and 30 minutes between the hours of 5:01 PM and 8:59 AM (after hours). The City reserves the right to suspend or terminate the Contractor from this agreement for a failure to timely respond on three (3) or more occasions in any 30 day period. All requests for tow services will be on a rotating basis.
  - 3). Inability of the City Police dispatcher to establish phone contact with the contractor due to the phone not being manned.
  - 4). Failure to provide the number of tow vehicles as stated in the section dealing with Snow Emergency.
  - 5). The contractor engaging in a pattern of rude and/or disrespectful conduct to police department employees and persons, including persons reclaiming towed vehicles, interacting with the contractor or their employees.
  - 6). It is further agreed that this Agreement may be terminated if in the opinion of the City, there is reasonable or probable cause to believe that the Contractor, their agents or employees, have committed a criminal offense in the conduct of their towing operations or arising from and activity reasonably related thereto.
  - 7). The Contractor shall not assign, sublet or subcontract or otherwise transfer in any manner any portion of its rights or responsibilities under this agreement. Nor shall the Contractor sell or transfer any of its rights or responsibilities under this contract.
  - 8). The award of this Agreement is for the named entity and is not transferable, or subject to reassignment or resale.
- D) The Contractor recognizes that the City maintains the right to tow a vehicle out of rotation due to known delays in response or for other reasonable police needs. Further, the City reserves the right to call for services from companies on or off the "list" if special circumstances require.
- E) Collection of all tow fees or debts is the sole responsibility of the Contractor.
- F) In determining which tow companies will provide services as Contractor, a tow companies experience, availability, honesty, and past working relationships with the City will be taken into consideration. To protect the interests of the Citizens of Manchester, the City reserves the right to initiate, conduct or follow-up through investigative practice, the backgrounds of Contractors and or their employees. Some of those investigative checks may included but not strictly limited to:

- 1) Criminal Record Check
  - 2) Personal reference review
  - 3) Financial reference review
  - 4) Attorney General's Office of Consumer Protection
  - 5) Any other Law Enforcement agency
  - 6) Any other public or private agency
- G) In the event an investigative process is undertaken and the results determine a Contractor or employee of same to be involved in serious criminal conduct or issues of moral turpitude then the Chief of Police or his designee shall review and take whatever action he/she deems appropriate. Those actions or reviews will be based on a case by case basis and shall not be subject to the appeals process.
- H) The City reserves the right to determine the number of Agreements awarded to Contractors. It is further recognized that only those interested tow companies that attend the mandatory pre-agreement meeting on December 03rd, 2004 will be eligible to participate as a party hereto during the two year agreement.
- I) The Contractor shall maintain and keep a current City of Manchester Business License that is governed by any and all applicable Ordinances of the City of Manchester.
- J) The principal Contractor storage lot must be staffed and open, Monday through Friday during the hours of 0900-1700hrs.
- K) Between the hours 5:01 PM and 8:59 AM, the Contractor will respond within sixty (60) minutes to a closed storage lot or as scheduled with a consumer.
- L) A person shall answer calls to the Contractor from the City. Voice mail, answering machines and/or similar devices or technology is not permitted.
- M) Upon acceptance and execution of this agreement and every six (6) months thereafter the Contractor shall:
- 1) Provide the City, through its Police Traffic Division, a list of its wrecker operators, their qualifications, and a photocopy of their New Hampshire Drivers License.
  - 2) The qualifications of any new operator shall be provided to the City, through its Police Traffic Division, within 10 days of employment by said Contractor.
  - 3) Any wrecker operator who operates a wrecker with a Gross Vehicle Weight (GVW) over 10,000lbs, shall provide a photocopy of their Medical Certificate, to the City through the Police Department Traffic Division.
  - 4) Notify the City if any of its agents, servants, or employees, including tow truck drivers is charged with or convicted of any crime or motor vehicle violation.
- N) Contractor wreckers shall display lettering on both sides of the vehicle that indicates the name of the Contractor and wrecker service, the city and state in

which the vehicle is usually based, and the business telephone number. Said lettering shall contrast sharply in color with the background and be a minimum two (2) inches in height.

- O) The City through the Manchester Police Department shall schedule periodic meetings, with attendance of the Contractor or his designee mandatory. Failure to attend, may in the sole discretion of the Chief of the Manchester Police Department, result in the suspension of this agreement.
- P) Contractors shall possess minimum two wreckers, one of which must be a flatbed type and each wrecker having manufacturers GVW of 10,000lbs, with dual wheels and a four-ton minimum "winching" capacity. Wrecker shall have the same meaning as RSA 259:126.

#### **Mandatory Wrecker Equipment**

- 1) Dolly wheels (with the tire being of legal tread depth), snatch blocks, chains, nylon tow straps. This equipment shall not apply if the Contractor runs only "flatbed style" wreckers
  - 2) Broom, shovel, containers to place debris into, and other such materials necessary to safely tow vehicles and fulfill requirements of this agreement
  - 3) A sufficient quantity of material to contain and collect spills at an accident or tow scene. The Contractor shall be responsible for all cleanup and disposal of such materials.  
(Contractors may dispose of "Speedy-Dry" at the City of Manchester Drop-off facility). There will be no charge for this drop off of material.
  - 4) In the event of a spill requiring larger than normal amounts of sand or "Speedy-Dry" to be utilized at the scene, the Contractor shall sweep the material to the side of the roadway and the investigating police officer may, in his sole discretion notify the City of Manchester Highway Department to respond and remove the material.  
That decision rests solely with the investigating officer.
  - 5) Equipment to be used by the Contractor in the performance of this agreement may be inspected at any time by any member of the Manchester Police Department to insure compliance with the specifications of this agreement and state law. The Manchester Police department may utilize a New Hampshire State Trooper, or a State Highway Enforcement Officer to assist in the inspection of any wrecker at any time throughout the agreement period.
- Q) No debris shall ever be placed into a towed vehicle.
  - R) Contractors shall transport vehicles to a body shop specified by an owner/operator in Manchester or a contiguous town.
  - S) Pursuant to State Law, Contractors will notify the Manchester Police Department as soon as practical when non-agreement tows are conducted.

Additionally, the Contractor shall notify the Manchester Police Department within 48 hours of a tow in which any vehicle has been impounded. The Contractor shall also notify the owner of and such vehicle which the Contractor has towed pursuant to this agreement, when said vehicle has been on the Contractors tow lot in excess of 72 hours from the time it was initially towed.

- T) The Contractor may exercise any lien it may have on a towed vehicle pursuant to New Hampshire State law except that:  
The Contractor shall release to the owner/operator of any towed vehicle all necessary personal property not customarily sold with and/or permanently attached to the vehicle. This shall be without regard to any lien, which the Contractor may have upon said vehicle pursuant to New Hampshire State law.
- U) A schedule of rates shall be printed and those rates will be prominently displayed and affixed to the business office and tow lots of the Contractor

### **Article 3- Appeal of Suspension or Termination**

Any failure to observe or perform any of the terms of this agreement may result in suspension or termination of the Contractor from this agreement.

The City of Manchester shall give notice to the Contractor stating at a minimum, the action being taken, and detailed reasons for the suspension or termination. Upon receipt of a notice of suspension or termination the Contractor shall, upon request, be allowed to view all materials in the possession of the Police Department, relating to the reasons for the suspension or termination.

- 1) The Contractor shall have the right to appeal a suspension or termination to the Chief of the Manchester Police Department. The appeal shall be in writing and filed with the Chief of Police within 10 days from the date of the notice provided pursuant to paragraph 1 of this article. The appeal shall fully state all of the grounds for the appeal.
- 2) The Chief of Police or his designee shall be the hearing officer and shall set a date for a hearing on the appeal and notify the Contractor of same. The hearing shall be held as soon as possible upon receipt of the appeal. A written decision shall be provided to the Contractor within a reasonable time.
- 3) In the case of termination or suspension of a Contractor from this agreement the Contractor waives any and all claims for damages.
- 4) The City may in its sole discretion waive any of these administrative requirements when it deems such waiver to be in the best interest of the City.

#### **Article 4- Requests for City Tow Services**

The Contractor agrees to tow, at no cost to the City of Manchester, the Manchester Police Department or the vehicle owner:

- 1) Any vehicle belonging to the Manchester Police Department
- 2) Any auto, van, or pickup, excluding heavy machinery, owned by the City of Manchester, not to exceed five vehicles per year per Contractor.
- 3) Any vehicle impounded by the Manchester Police Department for investigative purposes. That shall include to and/or from the Manchester Police Station. The Contractor agrees to store any vehicle, which may be impounded by the Manchester Police Department at no cost to the owner, the Police Department, nor the City of Manchester. The Contractor may charge storage fees after the passage of twenty-four (24) hours from written notification to the Contractor from the Police Department that the vehicle is no longer impounded.

#### **Article 5- Fees and Administrative Charges**

The Contractor shall not charge in excess of the following fees and administrative charges:

Fees	Business Hours (0900-1700hrs)	After Business Hours (1701-0859hrs)
Basic Tow/Accident	\$75.00	\$90.00
Labor in excess 1 hour	\$50.00 per hour	\$50.00 per hour
Service call	\$45.00	\$45.00
Waiting time	\$35.00 p/hour In excess of 15 minutes	\$35.00 p/hour In excess of 15 minutes
Storage	First 24 hours free \$30.00 per 24 hour period thereafter	
Gate fee	None	\$25.00
Accident cleanup	\$25.00	\$25.00
Snow Emergency Tow	\$110.00 with \$25.00 of that fee to the City of Manchester	
Administrative Fee	\$5.00 per vehicle to the City of Manchester	

## **Article 6- Snow Emergencies**

The City of Manchester Highway Department declares Snow Emergencies. The Manchester Police Department with and through its Volunteer Independent Contractors assist that agency in removal of vehicles to allow the Highway Department to perform snow removals.

- A) The Contractor will be responsible for hiring two persons to staff facilities at the two City Impound Lots. These lots are to be located at or near the West Side Ice Arena and the Derryfield Park. The Manchester Police Department must approve those employees.
- B) One person will be assigned to the respective Impound Lot dispatching wreckers to the authorized tow locations. Additionally, that person will keep a detailed log, to include where the unit was towed from and which contractor towed it. Manchester Police Department approved forms shall be utilized. The other person assigned to the respective Impound Lot will assist with payment and release of said vehicles from those lots. Wrecker operators will not do currency exchanges. Manchester Police Officers will not take part in currency exchange.
- C) The Manchester Police Department will assign one officer to each respective lot to preserve the peace and enforce applicable laws.
- D) Contractors to provide, at their cost, portable shelter, lighting, and generator at the respective lot during Impound operations. The Contractor is responsible for delivery, setup, and removal of those items prior to and upon completion of the operation.
- E) Contractors to provide communications equipment to facilitate assignment and movement of wreckers throughout the operation.
- F) City of Manchester Snow Emergency Tow Slips will be utilized, the contractors initials printed on the slip. Each slip is to be a three part form. All writing shall be clearly readable. The wrecker operator shall document all visible damage to the vehicle being towed, on the tow slip.
- G) Wreckers will be dispatched to the locations as requested by Manchester Police Officers. Upon direction by the officer, those wrecker operators will tow only those vehicles identified by the Police Officer.
- H) The Contractor shall release to the owner/operator of any towed vehicle, any or all personal property contained within but not attached to such vehicle upon request by the owner.
- I) The respective Impound Lot will remain open for twenty-four (24) starting at the time of the first tow.
- J) The Manchester Police Department Officer in charge of the Snow Removal operation may allow for an early closing of the respective lot.
- K) At the conclusion of the operation or upon closing of the Impound Lot, the Contractor shall immediately tow to the Contractors lot, any remaining vehicles. Those vehicles so affected shall accrue an additional \$25.00 tow fee. There shall be no \$25.00 fee if the vehicle was removed prior to 24 hours at that lot.

- L) No vehicles will be released from the Impound Lot without payment of the Snow Emergency fee of \$110.00 unless first having received permission from the Police Department Snow Emergency Commander or the station Officer in Charge.
- M) The Contractor shall provide two (2) wreckers for the first snow emergency operation. The officer in charge of that operation will decide if more or fewer wreckers are needed during an event.
- N) The Contractor shall provide one (1) wrecker for each subsequent snow emergency operation. The officer in charge of the that operation will decide if more or fewer wreckers are needed during an event.
- O) No vehicle will be towed from the following area without first checking with the Station Officer in Charge at the Manchester Police Department: Manchester Street between Chestnut and Pine Street, Pine Street from Merrimack to Hanover, Chestnut Street from Manchester to Merrimack Street, the parking lot referred to as the "Pine Street Lot" and the parking lot referred to as the "South Lot".
- P) The requirements to recover a vehicle towed during a snow emergency are:
  - 1) Proof of Ownership
  - 2) payment of the \$110.00 fee
  - 3) Cash is the only allowable transaction
- Q) A \$25.00 administrative fee to the City of Manchester will be taken from the \$110.00 fee.
- R) The Contractor LMC will not participate in snow emergency procedures in recognition of their towing, storing, and disposing of abandoned vehicles.

#### **Article 7-Insurance related issues**

Insurance certificates as detailed below shall be furnished to the City prior to this agreement being finalized and the Contractor agrees to maintain insurance as prescribed below in full force and effect during the entire term of this agreement.

- A) Comprehensive General Liability Insurance- written on occurrence form, including completed operations, coverage, personal injury liability coverage, broad form property damage liability coverage, and contractual liability coverage insuring the agreements contained herein. The minimum limits of liability on such insurance shall be \$1,000,000.00 each occurrence and, where applicable, in the aggregate combined single limit for bodily injury and property damage liability: \$1,000,000.00 annual aggregate personal injury liability.
- B) Auto liability insurance for owned, non-owned, and hired vehicle. The minimum limit if liability carried on such insurance shall be \$1,000,000.00 each accident, combined single limit for bodily injury and property damage.
- C) Worker's Compensation insurance whether or not required by the Hew Hampshire RSA, 1995, as amended with the statutory coverage including employers liability insurance with limits of liability of at least \$1,000,000.00 each employee and \$500,000 per policy year.
- D) Any and all deductible on the above described insurance policies shall be assumed by and for the account of , and at the sole risk of the Contractor.



- E) Insurance companies utilized must be admitted to do business in New Hampshire or be on the Insurance Commissioners list of approved non-admitted companies and shall have a rating of (A) or better in the current edition of Best's Key Rating Guide.
- F) Contractor agrees to furnish certificates of the above mentioned insurance to the City on the date of the agreement and, with respect to the renewals of the current insurance policies, at least thirty (30) days in advance of each renewal date. Such certificates shall, with respect to the comprehensive general liability and auto liability insurance, name the City and the Manchester Police Department as an additional insured and, with respect to all policies shall state that in the event of cancellation or material change, written notice shall be given to the City, Office of Risk Management, 1 City Hall Plaza, Manchester, N.H. 03101, and the Manchester Police Department at least 30 days in advance of such cancellation or change.
- G) The purchase of insurance required or the furnishing of the aforesaid certificate shall not be a satisfaction of the Contractors indemnification responsibilities to the City or the Manchester Police Department.
- H) The Contractor agrees to be solely responsible for the payment of its employee's unemployment, social security, and other payroll taxes including contributions from them when required by law.
- I) Contractor hereby agrees to protect, defend, indemnify, and hold the City, and its employees, agents, officers, and servants free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including but not limited to, the amounts of judgments, penalties, interests, court costs, legal fees and all other expenses including claims, liens, debts, personal injuries to property, including property of the City, and without limitation by or in any way incident to, in conjunction with or arising directly or indirectly out of the Volunteer Independent Contractor Agreement. The Contractor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demands, or suits, at the sole expense of the Contractor. Contractor also agrees to bear all costs and expenses related thereto, even if the claim or claims alleged are groundless, false or fraudulent. This provision is not intended to create any cause of action in favor of any third party against the Contractor or the City or to enlarge in anyway the Contractors liability but is intended to solely provide for injuries to third persons or property arising from the Contractors performance hereunder.